

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *JL* D.C.

05 DEC 16 AM 9:53

CIDE ROBINSON,

Plaintiff,

vs.

COLONEL GARRY T. HICKS, et al.,

Defendants.

X
X
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X
X

No. 04-2678-B/V

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

SECOND ORDER OF PARTIAL DISMISSAL
ORDER GRANTING LEAVE TO AMEND
AND
ORDER DIRECTING PLAINTIFF TO FILE AMENDED COMPLAINT

Plaintiff Cide Robinson, a resident of Southaven, Mississippi, filed a pro se complaint on the form used for instituting actions pursuant to 42 U.S.C. § 1983 on August 31, 2004 and paid the civil filing fee. On October 25, 2004, plaintiff filed copies of a number of additional documents pertaining to this action. The Court issued an order on December 16, 2004 that, inter alia, dismissed the complaint with respect to the Secretary of the Air Force, pursuant to Fed. R. Civ. P. 12(b)(1), for lack of subject-matter jurisdiction and directed the plaintiff to show cause, within thirty days, why the remainder of the complaint should not be dismissed for failure to state a claim on which relief may be granted.

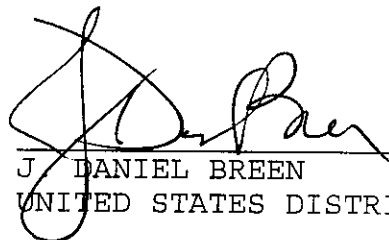
Plaintiff did not file a timely response to the order to show cause. On January 31, 2005, an attorney filed a notice of appearance on behalf of the plaintiff, accompanied by a motion for an extension of time to respond to the order to show cause. The Court issued an order on February 1, 2005 granting the motion and extending the time for a response to March 17, 2005. On March 17, 2005, counsel filed a motion seeking a further extension, until March 22, 2005, to file a response. The Court granted that motion on March 21, 2005. Plaintiff, through counsel, filed his response to the order to show cause on March 22, 2005.

As a preliminary matter, the plaintiff's response to the order to show cause does not address the numerous reasons, which were set forth at length in the previous order, why the complaint does not state a claim against any defendant under 42 U.S.C. § 1983. Accordingly, the Court DISMISSES the § 1983 claim against all defendants, pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim on which relief may be granted. As the § 1983 claim is the only claim asserted against defendants Hicks, Montgomery, Burton, Cotney, and Hargett, this terminates their involvement in this case.

In his response to the order to show cause, the plaintiff seeks leave to amend his complaint to assert a Title VII claim against defendant TNANG. Attached to the response is a decision of the EEOC Office of Federal Operations, dated March 15, 2005,

dismissing the plaintiff's appeal from a September 27, 2004 agency decision because he had commenced this action. The dismissal order indicates that the plaintiff attempted to exhaust a race discrimination claim based on the fact that he was detailed to the position of Quality Management Officer in January, 2004. The dismissal notice states that plaintiff has the right to file a civil action within ninety (90) days of receipt of the notice. Accordingly, plaintiff's request for leave to amend his complaint to assert a Title VII claim against TNANG is GRANTED. The amended complaint must be filed within thirty (30) days of the date of entry of this order. Because plaintiff is represented by counsel, summonses will be issued by the Clerk upon filing of the amended complaint. Plaintiff is ORDERED to serve the defendant with copies of the order to show cause, the response to that order, and this order along with the summons and complaint.

IT IS SO ORDERED this 15th day of December, 2005.


J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 10 in case 2:04-CV-02678 was distributed by fax, mail, or direct printing on December 16, 2005 to the parties listed.

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Cide Robinson
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Honorable J. Breen
US DISTRICT COURT